

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DR. EMANUEL OKEREKE,

Plaintiff,

-against-

14-cv-3368 (LAK)

JOHN CHARLES ALLEN,

Defendant.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge*.

This diversity action seeks damages for alleged professional malpractice by the defendant attorney. Defendant moves (1) to dismiss for lack of subject matter jurisdiction, failure to state a claim upon relief may be granted, improper venue and for other relief, (2) to vacate the Clerk's certificate of default, and (3) for sanctions. In a report and recommendation dated July 29, 2015 (the "R&R"), Magistrate Judge James C. Francis, IV, recommended that the motion be granted to the extent of transferring the action to the District of New Jersey on the basis of improper venue, denied insofar as it seeks dismissal for lack of subject matter jurisdiction, and denied in all other respects without prejudice to pursuing the other requested relief in the transferee court.

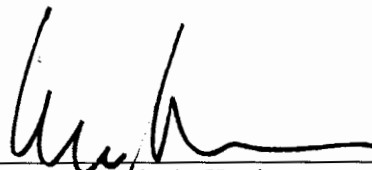
Defendant objects to the R&R, arguing that he should be awarded costs and sanctions and that the case should be dismissed for improper venue rather than transferred.

The Court finds no error. Transfer rather than dismissal is in the interest of justice, as the law favors disposition of litigation on the merits. Defendant remains free to pursue sanctions in the transferee court.

Accordingly, this action is transferred to the District of New Jersey, where it could have been brought, pursuant to 28 U.S.C. § 1406.

SO ORDERED.

Dated: September 17, 2015



Lewis A. Kaplan
United States District Judge

